IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1044 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADHAV UDESING MADHUSING

Versus

PATEL NATHABHAI FAKIRBHAI SINCE DECEASED THRO' HEIRS

Appearance:

1. Civil Revision Application No. 1044 of 1988

MR ND SUTHAR for Mr. NK MAJMUDAR for Petitioners

RESPONDENTS :: SERVED

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 15/04/2005

ORAL JUDGEMENT

Heard the learned advocate.

Feeling aggrieved by the judgment and order dated 20th July, 1988 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No. 74 of 1982, the appellants-defendants in Small Cause Suit No. 129 of 1978 have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The plaintiff, predecessor-in-title of the respondents was the owner of the suit shops situated at Vadodara. Three shops bearing Municipal Census Nos. S-38-2, 3 & 4 were, under the Rent Note dated 14th February, 1958 [Exh. 35], leased to the defendant no.1 for a monthly rent of Rs.35/=. By further agreement dated 18th December, 1974 [Exh. 36], the defendant no. 1 agreed to hand over the vacant possession of one of the suit shops i.e. the shop no. 4 to the plaintiff. In lieu thereof, the plaintiff agreed to cover "otla" admesuring 12' x 6' in front of the shop no.3 and to hand over the possession to the defendant no. 1. The monthly rent was agreed to be reduced to Rs. 54/= per month. The plaintiff instituted above referred Small Cause Suit No. 129 of 1978 for recovery of the suit shops on the ground that the defendant no. 1 had illegally, without the consent of the plaintiff, sub-let part of the suit premises admeasuring 3' x 3' to the defendant no. 2. The suit was contested by the defendants by filing written statement exh. 13. It was alleged that the defendant no. 2 was given part of the suit shop of the defendant no. 1 from inception. It has also been stated that defendant no. 1 had inducted the defendant no.2 for running a Pan Shop some fifteen years before at the instance of the plaintiff. That, both the defendants were lawful tenants of the plaintiff.

The learned trial Judge, by his judgment and order dated 30th December, 1981 allowed the suit and passed decree for possession in favour of the plaintiff. Feeling agreed, the defendants preferred Regular Civil Appeal No. 64 of 1982 in the Court of learned District Judge, Vadodara. The said appeal came to be dismissed by the lower appellate court on 28th July, 1988. Therefore, the present Revision Application.

Mr. Suthar has appeared for the petitioners defendants and has submitted that both the Courts below have erred in recording finding against the defendants. He has submitted that both the Courts below have believed that the defendant no.2 was inducted in the year 1961-62.

In absence of any evidence of defendant no.2 paying rent to the defendant no.1, the finding of sub-tenancy by both the Courts below is erroneous and is not supported by evidence on record.

I am unable to agree with Mr. Suthar. It should be noted that both the defendants have submitted common written statement Exh.13. In the said written statement at first, it is stated that defendant no.2 was present in part of the suit shops from inception, while in the next paragraph, it has been stated that the defendant no. 1 had inducted the defendant no.2 some fifteen years before at the instance of the plaintiff. Thus, the defence put forth by the defendant is self contradictory. Besides, it is not the case of the defendant no.2 that he was paying rent to the plaintiff.

In above view of the matter, the finding of subletting recorded by both the Courts below is just and proper. No interference is warranted. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

{Miss R.M Doshit, J.}

Prakash*